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10 *TAE K. KAI, Trustees of the Kai Family 1998 Trust*

11 **UNITED STATES BANKRUPTCY COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **SAN JOSE DIVISION**

14 In re:

15 HAWAIIAN RIVERBEND, LLC,

16 Debtor.

Case No.: 22-50314-SLJ

Chapter 11 (Sub-Chapter V)

Date: June 7, 2022

Time: 2:30 p.m.

Court: Hon. Steven L. Johnson

***** Hearing to be conducted by
Telephone or Video Conference**

17 **SECURED CREDITORS' REQUEST FOR CONTINUANCE OF HEARINGS ON: (1)**
18 **ORDER TO SHOW CAUSE, AND (2) DEBTOR'S COUNSEL'S MOTION TO WITHDRAW**

19 KENNETH Y. KAI and TAE K. KAI, Trustees of the Kai Family 1998 Trust ("Kai"),
20 secured creditors and interested parties in the above-captioned Case No.: 22-50314-SLJ
21 ("Bankruptcy Case"), respond to the Court's Order to Show Cause filed on June 2, 2022 [DKT # 46]
22 ("OSC"), and request the Court continue this hearing so their motion to either convert the
23 Bankruptcy Case to Chapter 7, or in the alternative dismiss the Bankruptcy Case with a refiling bar
24 ("Motion to Convert"), filed and served concurrently herewith, can be heard on such notice as the
25 Court deems adequate.

26 HAWAIIAN RIVERBEND, LLC ("HR LLC"), the Debtor in this single asset real estate
27 Bankruptcy Case, is owned and controlled by Michael H. Miroyan ("Miroyan"), HR LLC's sole
28

1 member.¹ Miroyan is also a debtor in Chapter 13 Case No. 22-50339, pending before this Court
2 (“Miroyan Chapter 13 Case”). HR LLC and Miroyan are both represented by Michael Jay Berger of
3 the Law Offices of Michael Jay Berger (“Berger”).

4 Berger has moved to withdraw in both this Bankruptcy Case and the Miroyan Chapter 13
5 Case,² and unless HR LLC and Miroyan are given an opportunity to retain new counsel and/or
6 appear at a continued hearing, Miroyan’s past behavior assures he will file an appeal of any adverse
7 ruling on the ground HR LLC was denied due process. Moreover, before dismissing a case with a
8 refiling bar, a debtor is entitled to fair warning and adequate notice. See *Jones v. Avery (In re Jones)*,
9 No. CC-15-1211-KuDTa, 2016 Bankr. LEXIS 1837 (9th Cir. BAP, Apr. 25, 2016).

10 Kai therefore requests this hearing on the OSC be continued to assure both HR LLC and
11 Miroyan are given adequate due process.

12 Kai further requests the hearing on Berger’s motion to withdraw be likewise continued so that
13 HR LLC has legal representation and can respond to the Motion to Convert. The Court will note that
14 although Berger claims his relationship with HR LLC and Miroyan broke down in his May 10, 2022
15 Motion to Withdraw, on June 3, 2022 Berger somehow managed to file a Bankruptcy Local Rule
16 4002-1 Application to designate Miroyan as the HR LLC responsible individual, and HR LLC’s
17 April and May Monthly Operating Reports.³

18 Kai therefore requests the hearings on the OSC and Berger’s motion to withdraw be
19 continued to a date and time to coincide with the hearing on the Motion to Convert.

20 Date: June 5, 2022

/s/ Wayne A. Silver

Wayne A. Silver, attorney for *KENNETH Y.
KAI and TAE K. KAI, Trustees of the Kai
Family 1998 Trust*

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24 ¹ See, HR LLC Amended Voluntary Petition filed on May 27, 2022 [DKT # 38]. Kai requests the
25 Court take judicial notice of the Voluntary Petition, Schedules, Statement of Financial Affairs, all
26 amendments thereto, Application for Responsible Individual, and Monthly Operating Reports under
Federal Rule of Evidence Rules 201(b) and 201(d), which are made applicable to this proceeding by
Federal Rule of Bankruptcy Procedure 9017.

27 ² Motion to Withdraw filed on May 10, 2022, [DKT # 28] in the Bankruptcy Case, and [DKT # 14]
in the Miroyan Chapter 13 Case.

28 ³ DKT #'s 47 – 49 in this Bankruptcy Case.